

7 February 1968

OGC Has Reviewed

MEMORANDUM FOR THE RECORD

SUBJECT: CIA Retirement Act

STATINTL

1. Retirement Counseling and Placement Staff of the Office of Personnel, called to inquire whether military retired pay can be waived at time of retirement to permit crediting of military service

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2. Sec. 252 of P.L. 88-643 authorizes credit for active prior military service (Subsection (a)(2)) but bars credit for such service (with three stated exceptions) if the participant " . . . is eligible for and receives retired pay on account of military or naval services . . . " (Subsection (e)). The critical word here seems to be the word "receives" which suggests that the retiree has an election over the receipt of military retired pay. The language of Sec. 252 is patterned after language pertaining to the Foreign Service retirement system (Sec. 852 (A)(e) of the Foreign Service Act of 1946, as amended). The comparable provision in the Civil Service retirement system is in 5 U.S.C. 8332(c) where with the same three exceptions prior military service is barred from credit if the employee " . . . is awarded retired pay on account of military service . . . ".

3. Civil Service Retirement Regulations. Under the Civil Service retirement system, waiver of retired pay in order to credit military service is clearly permitted by regulation:

"(b) An applicant for annuity who is in receipt of retired pay which bars credit for his military service may elect to surrender the retired pay and to have his military service added to his period of civilian service for the purpose of obtaining a greater benefit in the form of annuity. When it appears on the adjudication of a claim for annuity that the employee will benefit from relinquishment of retired pay and inclusion of his military service, the Bureau of Retirement and Insurance shall so advise him and permit him to exercise the right of election." (FPM Supplement 990-1, Sec. 331.301(b))

4. Foreign Service Retirement Regulations. The Foreign Service retirement system regulations likewise permit the waiver of retired pay in order to credit military service:

"A participant who is in receipt of retired pay which bars credit for his military service may elect to surrender his right to future military retired pay and to have his military service added to his civilian service for the purpose of obtaining a greater benefit in the form of annuity under the Foreign Service retirement system." (3FAM 673.5-4)

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6. Recommendation. In the interest of clarity and assuming there is no other controlling statute which prohibits the individual from waiving his military retired pay it may be helpful to spell out more

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Office of Legislative Counsel

Distribution:

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OLC/LLM:rw (8 February 1968)

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